

# **Joint Negotiating Committee for Higher Education Staff**

## **Work-Life Balance Guidance for Higher Education Institutions**

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**July 2003**

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**ANNEX 1 DTI Flowchart: Request for Flexible Working**

# Introduction

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## Purpose

The aim of this document is to assist HE institutions (HEIs) to achieve standards of good practice in work-life balance by implementing comprehensive and effective local policies. The guidance that it includes is designed to highlight the main legal entitlements in the area and to identify examples of good practice, and should be considered alongside existing local policies and relevant national agreements inherited by JNCHES.

## Partnership approach

All parties to the JNCHES strongly recommend that HEIs work with their trades unions as 'local partners' to develop policies on work-life balance.

A partnership approach to the development of such strategies is likely to enhance the quality of the policies reached and promote commitment to their implementation.

## Legal context

The current legislative framework on family-friendly employment was largely laid out in the Employment Act 2002.

In this guide the key legal entitlements are summarised under each of the relevant headings. The relevant pieces of legislation are set out below.

### Maternity leave and pay:

- Employment Rights Act 1996 as amended by Employment Relations Act 1999 and Employment Act 2002
- Maternity and Parental Leave Regulations 1999, as amended by the Maternity and Parental Leave (Amendment) Regulations 2002.

The Trade Unions have submitted a claim to JNCHES on maternity leave and pay in light of the inherited national agreements and further information on this will be circulated following discussions within JNCHES.

### Adoption leave and pay:

- Employment Rights Act 1996 and Social Security Contributions and Benefits Act 1992, as amended by the Employment Act 2002
- Paternity and Adoption Leave Regulations 2002.

**Paternity leave and pay:**

- Employment Rights Act 1996 as amended by the Employment Act 2002
- Paternity and Adoption Leave Regulations 2002.

**Parental leave:**

- EC Parental Leave Directive
- Employment Rights Act 1996 as amended by Employment Relations Act 1999
- Maternity and Parental Leave Regulations 1999
- Maternity and Parental Leave (Amendment) Regulations 2002.

**Time-off for dependants:**

- EC Parental Leave Directive
- Employment Rights Act 1996 as amended by Employment Relations Act 1999
- Maternity and Parental Leave Regulations 1999.

**Right to request Flexible working:**

- Employment Rights Act 1996 as amended by the Employment Act 2002
- Flexible Working (Procedural Requirements) Regulations 2002
- Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002.

These regulations apply to full-time, part-time, permanent, fixed-term and temporary employees. However, many of the rights are also dependent upon employees satisfying certain criteria, including periods of continuous service. Local agreements should recognise that all groups of staff are covered by the new rights and draft local policies accordingly.

**Benefits of policies on Work-Life Balance**

The list of legislation set out above provides a range of rights to working parents. HEIs need to reflect these in their conditions of service for staff.

- Developing policies on work-life balance offers HEIs important potential business benefits in the context of a highly competitive labour market. The report produced

by HEFCE<sup>1</sup> highlights that offering employees flexibility and control over working arrangements, may provide recruitment and retention incentives that can help HEIs to compete in a market where employers in other sectors and countries are able to offer considerably higher salaries.

- Flexibility may have important advantages for employers as well as employees. The increasing diversity of the student population has led to demands for provision of services over a wider range of hours or for a higher proportion of the working year. A workforce which includes members of staff who wish or are prepared to work outside of normal work patterns will offer an institution means of resourcing this expanding demand.
- Innovative arrangements are also needed to respond to important changes in society, which will see the proportion of the workforce with caring responsibilities continuing to increase. 65% of women with dependent children are in employment compared with 90% of men with dependent children, so it is likely that much employment growth in the future will be amongst women with children. There are over one and a half million one-parent families in the UK today, and the proportion of families with dependent children headed by a lone parent has trebled in the last thirty years to stand at approximately 25% in 1999. Finally, the population is ageing. In the next 20 years, the dependent elderly will out-number the dependent young and an increasing number of employees will have eldercare as well as child-rearing responsibilities<sup>2</sup>.

## **A harmonised approach**

When developing local policies on the rights of working parents, institutions may wish to consider with all the locally recognised unions the advantages of a single policy that applies to their whole workforce. Advantages of such an approach include:

- Equity. There is no sound reason why members of one staff group should be treated less favourably than another when it comes to access to conditions designed to support working parents; and
- Simplicity. Applying a range of different conditions to different groups is administratively complex and can lead to mistakes and confusion.

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<sup>1</sup> Scott, J *Flexible Employment Options: Audit of Current Practice and Examples of Best Practice in the HE Sector*, HEFCE Flexible Employment Options Project, October 2002

<sup>2</sup> See also <http://www.employersforwork-lifebalance.org.uk>

## Main areas to be covered by local policies

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In the following sections guidance is provided on the legal entitlement and examples of good practice are given.

### Flexible working

#### Law

From 6 April 2003 parents of children aged under six or of disabled children aged under 18 have the right to request flexible working, although this does not entitle them to insist upon a new pattern of work. The employer must consider the request seriously, and has to follow a procedure as set down in detail in the DTI guidance<sup>3</sup> (See Annex 1).

#### Who has a legal right to apply?

The right only applies to those who are employees: it does not apply to agency workers, or self-employed or freelance workers.

In addition the legal entitlement is limited to those who:

- have a child under six, or under 18 in the case of a disabled child
- are one of the following: the child's mother, father, adopter, guardian or foster parent, or married to or the partner of the child's mother, father, adopter, guardian or foster parent
- have worked for the institution continuously for at least 26 weeks at the date the application is made, and not have made another application within the previous 12 months
- make the application no later than two weeks before the child's sixth birthday or 18th birthday in the case of a disabled child
- have or expect to have responsibility for the child's upbringing
- are making the application to enable them to care for the child.

#### What kinds of flexible working are covered by the law?

Eligible employees are able to request any of the following:

- a change to the hours they work

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<sup>3</sup> *Flexible working: the right to request and the duty to consider. A guide for employers and employees*, DTI available from: <http://www.dti.gov.uk/er/individual/flexwork-pl520.pdf>

- a change to the times when they are required to work
- to work from home.

As such any of the following may be included: reduced working hours, annualised hours, compressed hours, flexitime, homeworking, job-sharing, self-rostering, shift working, staggered hours and part-year working.

### **Procedural aspects of provisions**

- The employee should apply in writing, setting out what pattern of flexible working is requested (e.g. reduced hours, flexitime, term-time working) and explain, in so far as it is possible to ascertain, the effect that this might have on the business, and how such effect might be dealt with. They should also state when they want the new pattern to begin.
- Any change agreed has permanent effect: the employee has no right to go back to the original working pattern.
- The employer has a legal duty to consider the employee's request by following a set procedure. Failure to follow the procedure entitles the employee to take a case to the Employment Tribunal.
- The employer should hold a meeting to consider the request within 28 days, at a mutually convenient time and place. The employee has a right to be accompanied by a work colleague (who can be a trade union representative but only if they work for the same employer). The companion can address the meeting, and confer with the employee, but cannot answer questions for the employee. The companion should be given paid time off for this meeting.
- If the employee fails to turn up for the meeting on two occasions, without reasonable excuse, the employer is entitled to treat the application as withdrawn.
- The employer should inform the employee of their decision in writing within 14 days of the meeting. If the request is accepted, the response should set out details of the new working pattern, and the date when it will begin.
- If the response is refused, the employer should state the business grounds for refusal, and explain why those grounds apply in the circumstances.
- The employer should also provide details of the right to appeal.

The grounds for refusing the request must be one of the following:

- Burden of additional costs
- Detrimental effect on ability to meet customer demand
- Inability to reorganise work among existing staff

- Inability to recruit additional staff
  - Detrimental impact on quality
  - Detrimental impact on performance
  - Insufficiency of work during the periods the employee proposes to work
  - Planned structural changes.
- The employee has 14 days to appeal in writing. The appeal can be on any grounds. If the employee appeals, the employer has to arrange an appeal meeting within 14 days of receiving the request. The employer must inform the employee of the outcome of the appeal in writing within 14 days of the meeting.
  - If the parties are unable to resolve their differences informally, the employee can make a formal complaint to an employment tribunal, or through the ACAS arbitration scheme, but only if the employer has failed to follow the set procedure or the employer's refusal was based on incorrect facts. There is no right to appeal against the decision itself.

### **Issues to address**

This is a complex area and institutions may wish to issue explanatory notes about their policy on the range of flexible working options to inform both managers and staff who might wish to request flexible working.

Policies should cover:

- Who is entitled to apply to work flexibly and the service requirements
- The kinds of flexible working that may be available. Policies could also include definitions of different kinds of flexible working (see box for example)
- The procedure for applying to work flexibly
- Reasons why a request to work flexibly may be refused. Institutions will want to consider carefully all the employer justifications provided by the legislation in the HE context
- The procedure for appealing against the employer's decision.

HEIs may also consider covering other issues in their policy, such as:

- A procedure for reviewing the agreed flexible working arrangement where the employee's circumstances change
- Issues relating to each potential working pattern. Some of these are indicated in the next section. Alternatively these could be covered in separate guidance.

## Kinds of Flexible Work

These are some of the main flexible working options:

**Annualised hours:** working time is organised on the basis of the number of hours worked over a year rather than a week.

**Career breaks:** this allows employees to take time out of work for personal reasons.

**Compressed hours:** total agreed hours are worked over a reduced period, for example over four days in a week or nine days in a fortnight.

**Flexitime:** the employee has some choice about when they work and can vary this from day to day, as long as they work the agreed total hours including certain core hours.

**Homeworking/teleworking:** this involves working from home for some or all of working time and typically involves the use of ICT to maintain contact with the workplace.

**Job-sharing:** where two (or occasionally more) people work on a part-time basis to cover a single full-time post.

**Part-time working:** employees have agreed hours which are less than the full-time week.

**Shift working:** employees are organised into shifts with working hours that enable employers to operate over longer than an eight-hour day.

**Staggered hours:** different employees have different start and finish times.

**Term-time/part-year working:** employees are able to take unpaid leave of absence during school holidays.

## **Good Practice Examples**

### **The University of Oxford**

The University of Oxford introduced a pilot scheme on Options for Balancing Working Life and Life Outside Work in 2002. This applies to non-academic and academic-related staff in the institution. The University offers the following flexible working options: reduced weekly working hours; term-time working; job share or job splitting; rota working; flexible hours; seasonal working; occasional remote working; unpaid “mini-breaks”; and additional unpaid leave

The application of the policy is not restricted to those with small children and staff may apply for a permanent or temporary change in their working arrangement. All permanent changes include regular review to allow a change in personal or departmental circumstances to be taken into consideration. Three criteria are used to assess applications:

- Any legal considerations
- Impact on own work, the work of others and the operational needs of the department
- Benefit to the department such as reduced costs, space saving or improved efficiency.

The university has produced both an employee guide and a management guide on this scheme.

### **The University of Bristol**

The university has brought existing flexible working practices in the institution together into a single policy which incorporates the provisions of the Employment Act 2002. The policy applies to all staff regardless of length of service, grade or personal circumstances.

Potential flexible working arrangements available in the university are: job sharing, part-time working, term-time working, flexible working hours and home working. Employees may also apply for other arrangements. The criteria for assessing applications are in line with those laid down in the legislation.

## **Issues relating to specific flexible working arrangements**

**Annualised hours.** This arrangement can help employers to resource peaks and troughs of work during the year. For example, it could involve particular staff working shorter hours outside of term-time and longer during the term. It could also enable employees to accommodate caring responsibilities that vary over the year, or to build up time-off by working additional hours at times of peak workload.

A policy or guidance on annualised hours would need to include:

- How hours are calculated
- Whether any hours are kept in reserve by the employer to deal with particular circumstances
- The arrangement for “banking” hours
- How actual working hours are to be agreed and reviewed
- Arrangements for changing the agreed working pattern.

### **Good Practice Example**

#### **Robert Gordon University**

The university has introduced an annualised hours scheme for its ancillary staff. This has helped the university to meet the terms of the Working Time Regulations and consolidate high levels of overtime. Staff have seen an increase in their pensionable pay via a flexible working premium and have transferred to new “professional and support staff” local terms and conditions.

Under the terms of the scheme janitorial staff work rotas over a 365 day period that average 37 hours a week.

**Compressed hours.** This arrangement means that the staff concerned will work longer hours on most days and either not be in work, or work shorter hours on the other day(s). From an employer’s point of view it can offer flexibility where some days of the week are more or less busy than others. Employees could, for example, use this method to reduce the amount of paid childcare that they require and/or to have more time during normal working hours with their family.

Issues to address in policies or guidance would include:

- The extent of compression that is allowed
- Any impact on the calculation of holiday entitlement.

**Flexitime.** Flexitime can help employers to staff extended operational hours and provide flexibility for urgent work to be completed outside of normal hours. It can offer employees the flexibility to deal with ongoing domestic demands, such as taking a child to school, as well as one-off emergencies. Under most schemes it also provides the potential for building–up additional leave.

Policies/guidance should include:

- Whether any core hours are required
- The bandwidth (the range of hours within which staff can work)

- The accounting period over which total working hours should balance
- How hours are to be recorded
- Whether it is possible to build-up additional leave and any limitations on this.

### **Good Practice Example**

#### **University of Brighton**

The Flexible Working Hours Scheme applies to APT&C staff in the university.

A four week accounting period (a total of 148 hours) is used for the scheme. As many as eight hours credit and four hours debit can be carried forward from one accounting period to another. Staff can build up hours in credit to take one whole day or two half days absence in any accounting period (subject to line manager approval).

The bandwidth used is 8am to 6pm. The core hours when all staff are required work are 9.30am to 12.00 and 2pm to 4pm.

The scheme sets out the treatment of absence in hours' calculations; the arrangements for agreeing working hours and recording and calculating hours worked.

**Homeworking/teleworking.** The main advantages to employers of having employees who work from home are potential savings in accommodation costs, plus the possibility of recruiting and retaining experienced staff. Homeworking can offer employees greater flexibility in the organisation and control of their work, make it easier to combine work and domestic responsibilities and provide savings in the time and cost of travelling.

Amongst the issues that should be covered by the institution's policy and guidance are:

- Whether staff are able to apply to work from home all the time and/or some of the time
- The provision of office equipment
- Any payment for other costs of working from home
- Systems of communication and reporting
- How performance will be monitored
- Training needs
- Health and safety assessments.

**Job-sharing.** Job sharing is typically used by employers as a way of offering reduced hours whilst maintaining cover of a full-time post, and thereby helping with the recruitment or retention of staff. For employees job sharing is often a way of remaining in a relatively senior post whilst working part-time.

Issues that should be covered in the institution's policy and guidance include:

- Finding a job-share partner
- Decisions on dividing the hours and responsibilities of the post
- Communication and overlap between job share partners
- What happens if one job share partner leaves.

### **Good Practice Example**

#### **Middlesex University**

All individuals are able to apply for any vacancy within the university on a job share basis or to cover an existing post as a job share. External job advertisements include a standard statement that job share applications will be considered. The university considers that most jobs can be covered on a job share basis with appropriate planning and management. Where managers consider that job share is not feasible this must be discussed with the human resources service. The policy states "a decision that a post is not suitable for job sharing must be based on sound objective reasons".

In the case of existing staff who wish to transfer to a job share in their current post and who have that request agreed, the vacant part of the post will be advertised on at least two separate occasions and a range of other options are considered if it is not possible to fill the vacancy. The same principles apply when one half of an existing job-share partnership resigns, although in these cases the option of the remaining partner taking on the vacant part of the post is also considered.

Applicants who apply to a new post at the university may do so with a job-share partner or separately. Factors taken into account when determining the success of the application include the quality of the candidates and the implications of appointing a single job-sharer and advertising again for the vacant part of the post.

The working patterns to job-sharers are determined with the agreement of the line manager and may include alternated weeks, alternate days or split days. In most cases an overlap time is built in which is a minimum of one hour a week.

**Part-time working.** Part-time working is the most common means used by employees in the UK to combine work and family responsibilities. Employers typically offer part-time work as a way of covering peaks in their business, to enable the extension of operating hours (at evenings or weekends, for example) or in response to employee requests.

Unlike other aspects of flexible working a specific body of law applies to part-time working. The Part-time Workers (Prevention of Less Favourable Treatment)

Regulations which came into effect in 2000, ensure that part-time workers are not treated less favourably than comparable full-timers in their contractual terms and conditions, unless such treatment can be objectively justified. This means that compared to full-timers, part-timers are entitled to:

- the same hourly rate of pay (though part-timers are not entitled to enhanced overtime pay until they have worked more than normal full-time hours)
- the same access to company pension schemes
- the same entitlement to annual leave and maternity/parental leave on a pro rata basis
- the same entitlement to contractual sick pay
- no less favourable treatment in access to promotion, training or in selection for redundancy.

In addition, case law in relation to the Sex Discrimination Act has established that refusing an employee's request to work part-time can be seen as sex discrimination.

**Shift working:** Shift working has traditionally offered little flexibility to the employee, tending to be highly structured and often involving a group of workers doing the same job one after another to provide 24-hour cover. It is not a major component of working practices in the HE sector and is unlikely to form a major part of the flexible working arrangements requested by employees. However, where shift-working is in place (e.g. for security staff) employees might request a variation offering greater flexibility. This could include self-rostering (where teams of workers organised their own shift patterns in a way that ensures full cover whilst also having flexibility to address individual domestic circumstances); or shift swapping (whereby employees are allowed to swap shifts with their colleagues).

**Staggered hours.** This arrangement gives the employer the potential to extend operating hours, whilst allowing employees some choice in start and finishing times. However, once agreed these times are usually fixed, so there is not the same scope for variation as with flexitime.

HEIs' arrangements will need to address:

- The range of start and finish times that are permissible.

**Part-year/term-time working.** The main attraction of this pattern of working to employers is that it may offer the potential to recruit and/or retain staff with school age children. In addition, since for many areas of an HEI the need for staff is reduced outside of the normal teaching periods it provides the potential to cut staffing costs since employees who have opted to take unpaid leave during the school holidays will not necessarily need to be replaced.

Institutional guidance and policies should cover:

- When and how normal paid leave entitlement should be used
- Continuity of service and related benefits
- Whether staff are paid in equal instalments over the whole year, or in full for the periods worked month by month; and the impact of this as regards tax, benefits and other factors with income thresholds
- The impact on other terms and conditions.

**Career breaks.** Career breaks allow employees to take time off to bring up children, care for an elderly relative or undertake career or personal development through secondment or by some other means. This has the distinct advantage of attracting good staff back to work. HEI's arrangements for career breaks need to address:

- The duration of the career break and arrangements for the return of the employee to his/her current or a comparable alternative post.
- The impact on pay and conditions
- Measures to ensure equal pay and to avoid discrimination
- Arrangements for the employee to keep in touch during the career break.

## **Paternity leave/pay**

The Employment Act 2002 introduced a statutory right to paternity leave for the first time in the UK.

### **Law**

The right is to two weeks paternity leave, currently paid at £100 per week (or 90% of employee's average weekly earnings if this is less), in respect of babies expected on or after 6 April 2003.

The following conditions apply:

- This right is available for an employee who has, or expects to have, responsibility for the child's upbringing, and is either the biological father, or the mother's husband or partner (including same sex partner).
- The employee must have 26 weeks continuous employment in the Qualifying Week (the 15<sup>th</sup> week before the baby is due), and have worked for the employer from the 15<sup>th</sup> week up until the baby's birth.
- Employees can take one week or two consecutive weeks' leave. It cannot be taken as odd days or two separate weeks.

- Leave cannot begin before the baby's birth. The employee can choose to begin leave either on the day the baby is born, on a day following a certain number of days following the birth, or on a specified date after the birth, as previously notified to the employer. Leave must be completed within 56 days of the actual birth.
- Employees are entitled to paid paternity leave if the baby is stillborn after 24 weeks of pregnancy.
- The employee must notify the employer of his intention to take paternity leave by the end of the 15<sup>th</sup> week before the expected week of childbirth, telling him when the baby is due, when he wants to start leave, and whether he wants to take one week or two.
- To claim Statutory Paternity Pay, the employee must give 28 days notice, and produce a self-certificate. The Government has produced a model self-certificate, SC3<sup>4</sup>.
- The employee can change the date leave begins within 28 days notice.
- During paternity leave the employee is entitled to the benefit of all contractual terms and conditions, except pay. Holiday entitlement continues to accrue.
- The employee is entitled to return to the same job at the end of paternity leave, and is protected from dismissal or unfavourable treatment for reasons connected with paternity leave.

### **Issues to address**

HEIs' policies on paternity leave should cover:

- Entitlement to paternity leave and pay
- Length of paternity leave
- Permitted timing of paternity leave and flexibility as to when it is taken
- Level of paternity pay
- Arrangements for self-certification
- Notice requirements.

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<sup>4</sup> available at <http://www.inlandrevenue.gov.uk/pdfs/emp2003/sc3.pdf>

## **Good Practice Example**

### **Middlesex University**

Under the terms of the paternity leave provision at the university staff with 26 weeks service at the 11<sup>th</sup> week before the Expected Week of Childbirth are eligible for two weeks leave which is paid at the full contractual rate of pay. Managers are also expected to treat requests for annual leave at this time as priority.

## **Adoptive leave/pay**

The Employment Act 2002 also introduced adoptive leave and pay entitlement for the first time.

### **Law**

Adoptive leave is available to one person in respect of each child placed. Where the adoption is being undertaken by a couple they will have to decide which partner takes the adoption leave. The other partner may be eligible to paternity leave under the same terms as set out above, with the key reference date for entitlement being the week in which they are notified of being matched with a child for adoption.

Adoptive leave is not available for foster parent or stepparent adoption.

Adopters have statutory leave and pay entitlements similar to those of pregnant mothers, except that all entitlement is restricted to those with at least 26 weeks service with their employer at the time that the adoption agency notifies the adopter of a match with a child, and there is no entitlement to 6 weeks pay at 90% of actual earnings: all Statutory Adoption Pay (SAP) is currently at the rate of £100 per week or 90% of employee's average weekly earnings if this is less.

In order to claim adoptive leave, the employee must notify the employer of their intention to take leave, and the start date, within 7 days of being notified by the adoption agency, unless this is not reasonably practicable. Employers must write back within 28 days, setting out the date of return to work.

- Adopters are entitled to 26 weeks ordinary adoption leave, followed by up to 26 weeks of additional adoption leave.
- SAP is paid for up to 26 weeks at a rate of £100 per week or 90% of employee's average weekly earnings if this is less.
- All contractual benefits (except wages or salary) continue during ordinary adoption leave, whereas only certain terms (such as confidentiality clauses) continue during additional leave.
- Employees who wish to return to work early must give 28 days notice.
- Employees are protected from dismissal or unfavourable treatment for reasons connected with adoption leave.

Employees must also give the employer documentary evidence from the adoption agency of their entitlement to statutory adoption pay and the employer can decide to request documentary evidence of entitlement to adoption leave.

### **Issues to address**

HEIs' policies on adoption leave should address:

- Entitlement to and level of adoption leave including who is entitled, service requirements for entitlements and the duration of the adoption leave period
- Entitlement to and extent of adoption pay, including both the amount paid and the period of payment
- Treatment of existing terms and conditions whilst on leave, including any variation in the statutory requirements
- Employer and employee notice obligations
- Arrangements for providing evidence of entitlements
- Existing provision within local policies and national agreements.

In addition HEIs may wish to cover other issues in their policies. These could include:

- Arrangements for communicating with the employee whilst on adoption leave
- Other employment information, advice and guidance to employees about to adopt a child.

### **Good Practice Examples**

#### **Robert Gordon University**

The registered adopter must have 26 weeks service. The policy provides for 52 weeks leave with 13 weeks at full pay including SAP and 13 weeks on half pay plus SAP. In addition, an adopter's partner can apply for paternity leave for 2 weeks with one week at full pay including SPP and one week at half pay plus SPP providing the two weeks are taken as a single block.

## **University of Bristol**

The adoption leave policy at the university applies to any female member of staff who has completed 26 weeks continuous service at the time that the adoption placement is made. The provisions are also available to a male member of staff recognised by the adoption agency as the main carer.

Entitlement is to benefits equivalent to the university's maternity leave scheme if the child is under three years of age or has a serious disability or learning difficulties or behavioural problems. In such cases the entitlement is to the equivalent of 16 weeks leave on full pay plus 28 weeks unpaid leave. Where these circumstances do not apply the paid leave entitlement is reduced to eight weeks. The university will also consider requests for fostering leave in some circumstances.

## **Parental leave**

Parental leave is the right to take unpaid time off work to look after a child or to make arrangements for a child's welfare. This kind of leave is of a planned nature and is likely to cover a period of weeks rather than days. The right to time-off to deal with certain domestic emergencies falls under the heading of dependants' leave which is outlined in the next section.

Legal rights in this area were first introduced in December 1999, with amended provision effective from January 2002. Under the terms of the legislation much of the detail of how parental leave entitlement should be applied can be determined by a collective or workforce agreement. Where such an agreement is not in place a statutory fall-back scheme applies.

Institutions are encouraged to draw up policies to ensure that flexible leave provisions operate in a way that is most appropriate to the needs of the HEI and its staff.

## **Law**

Statutory entitlement provides for a total of up to 13 weeks unpaid leave for each child, or 18 weeks in the case of disabled children. The following is a summary of the main legal provisions. More detailed guidance is available from sources such as the DTI<sup>5</sup>.

Entitlement to parental leave is available to those with at least one year's continuous service with their employer; AND

- Employees who have legal parental responsibility for a child born or adopted after 15 December 1999.

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<sup>5</sup>Parental leave: a guide for employers and employees available at

[www.dti.gov.uk/er/individual/parental.pdf](http://www.dti.gov.uk/er/individual/parental.pdf)

OR

- Parents of children born or adopted between 15 December 1994 and 14 December 1999. Here, parental leave must be taken before 31 March 2005 (or the adopted child's 18<sup>th</sup> birthday, if sooner)

In addition:

- The child must be under five years-old (or 18 years-old if the child is entitled to a disabled living allowance), or where the child is adopted, within five years of the date of adoption.
- Parental leave is 'for the purpose of caring for the child'.
- Women who qualify can take parental leave immediately after maternity leave.
- Employees are entitled to 13 weeks' parental leave in respect of each child (including multiple births). Where employees change employer they can only take 13 weeks per child in total, including any leave taken with a previous employer.
- Parental leave cannot be transferred from one parent to another.
- Where no agreement has been reached the default provisions provide for leave to be taken in blocks of one week, or multiples of one week (though leave can be taken in one day blocks if the child is disabled).
- The maximum leave to be taken in any one year is four weeks.

Employees have to give the employer notice, at least 21 days in advance, of the dates leave is due to begin and end.

The employer can postpone leave for up to six months if the employer 'considers that the operation of his business would be unduly disrupted if the employee took leave at the time stated', but the employer cannot postpone leave which immediately follows childbirth or adoption.

Statutory provision provides a range of protection to employees taking parental leave. This includes:

- The continuation of the employment contract and of some terms and conditions during the period of the leave
- For periods of four weeks' leave or shorter the right to return to the same job as before the leave started
- For longer periods the right to return to the same job, or if not practicable a similar job with the same or better terms and conditions

### **Issues to address**

When drawing up a policy on parental leave HEIs should include:

- Total length of parental leave, including variations for different circumstances
- Entitlement to parental leave including the service requirement for eligibility, staff to whom it applies, definition of parent and age limit for children
- The treatment of parental leave for pay purposes
- Any variation in the arrangement where more than one parent is an employee of the institution
- Treatment of terms and conditions whilst on parental leave.

A policy on parental leave will also need to address the flexibilities provided for in the legislation:

- Amount of employee notice required
- How leave can be taken, for example the minimum or maximum leave that can be taken in one period (out of the total of 13 or 18 weeks per child)
- Arrangements for the employer to postpone leave as a result of business need.

### **Good Practice Example**

#### **University of Brighton**

The parental leave agreement\* between the university and the trade unions applies to all staff.

Unpaid parental leave is available up until the child leaves secondary education regardless of the age or date of birth of the child (this does not affect the statutory rights in respect of children entitled to a disabled living allowance (DLA)).

The agreement allows parental leave to be taken in a variety of ways: a single block of 13 weeks (18 weeks in the case of children entitled to a DLA); a number of shorter blocks of absence; a reduction in working hours for 13 or 18 weeks (as applicable); or a combination of the last two options.

Members of staff are normally required to give a minimum of 21 days notice of the intention to take parental leave, although this requirement may be waived at the discretion of management.

The agreement allows for parental leave to be delayed for up to six months by the head of school/department in exceptional circumstances

\*NOTE: currently under revision in light of the Employment Act 2002

## Dependants' Leave

Leave for dependants has the purpose of providing an immediate short-term and limited period of time-off to deal with unforeseen emergencies relating to dependants.

### Law

The following is a summary of the main aspects of the law in this area. More detailed guidance can be obtained, for example, from the DTIT<sup>6</sup>.

All employees, regardless of length of service, are entitled to take leave to deal with dependant emergencies and there are no specified limits in the legislation on the length of leave or the number of times it can be taken. However, DTI guidance suggests that "for most cases one or two days should be sufficient to deal with the problem". The statutory entitlement is to unpaid leave.

Dependants are defined as including: a spouse, child or parent of the employee; someone living in the household with the employee who is dependent on them, or, in cases of illness or injury or where care arrangements break down, someone else who reasonably relies on the employee for assistance.

The right allows employees to take leave in unforeseen or unexpected circumstances to deal with an immediate problem and/or to make longer-term arrangements relating to:

- The illness, injury or assault of a dependant
- A dependant having a baby
- The death of a dependant
- The disruption to or breakdown of care arrangements for a dependant
- An unexpected incident involving the employee's child during school hours.

Employees are protected from any detrimental treatment by the employer relating to the taking of dependants' leave.

The employee needs to tell the employer, as soon as reasonably practicable, the reason for and likely length of absence, but this information does not have to be provided in writing.

### Issues to address

When drawing up a policy on dependants' leave, HEIs should include:

- Definitions of dependants and the circumstances under which dependants leave can be taken setting out the statutory requirements or any variations to these

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<sup>6</sup> DTI *Time-off for dependants: A guide for employers*

- The treatment of dependants' leave for pay purposes
- Arrangements for notifying the employer of the reasons for absence.

### **Good Practice Example**

#### **Middlesex University**

All staff are covered by the policy and are entitled to paid time off to accompany a sick dependant to the dependant's general practitioner, clinic, hospital or dental surgery provided that this is supported by an appointment card, doctor's note or note on a compliments slip from the organisation confirming the appointment. This is limited to up to 3 visits in any one 12 month period. Staff are also entitled to up to 5 days paid leave in any one leave year, to care for a sick dependent. Time off in excess of 5 days has to be arranged as time off in lieu, unpaid leave or annual leave although the University will deal sympathetically with exceptional cases of dire need.

## DTI Flowchart: Request for Flexible Working

